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GOVERNOR



LEONARD K. PETERS  
SECRETARY

COMMONWEALTH OF KENTUCKY  
**ENERGY AND ENVIRONMENT CABINET**

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
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COMMISSIONERS  
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CHAIR  
WILLIAM D. DONAN  
JOE CHILDERS

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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF OCTOBER 9, 2008: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson and Commissioner William D. Donan were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Lentz, Thompson, Morrison, Geisler, Boyd and Smock who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, Tara New.
- ❑ The **minutes** for the meeting on **09/11/08** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

- ❑ **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

  - 06-MSRC-094 Brian S. Bowen, 07-MSRC-002 Robert C. Larsen, 07-MSRC-189 Daniel A. Bryant, 07-MSRC-199 Timothy A. Young, 08-MSRC-038 Randolph Hardin, 08-MSRC-138 Larry Gibson were called in turn. None of these respondents appeared or participated and no one on their behalf filed any response. OMSL moved for **revocation** for no less than one (1) year as to each based upon noncompliance with the required submittals, drug testing or evaluation terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order for each. Commissioner Donan made a motion to **grant** the motions which were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered upon the signature of Davidson.
  - 08-MSRC-063 Richard M. Green was called and he appeared in person to defend. After discussion OMSL moved for an **abeyance** to November 13 so that drug testing documentation and an assessment may be completed. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- ❑ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

  - The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 08-MSRC-211 Shane Martin, 08-MSRC-217 Brian Caldwell, 08-MSRC-218 Dennis W. Justice, 08-MSRC-219 Kenneth Travis, 08-MSRC-220 Daniel L. Smith, 08-MSRC-221 Michael C. Sexton, 08-MSRC-223 Kenny L. McKenzie, an Initial Denial case, 08-MSRC-224 Brian M Hacker, 08-MSRC-225 Ronald D. Cooper Jr., 08-MSRC-229 Joey K. Scott, and 08-MSRC-230 Clay Layton, each in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Davidson requested and received a waiver from the determination on Smith citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
  - The Commission called also the KRS 351.120(12) Petition for Appeal of, 08-MSRC-222 Buddie Ray Morris III, who was duly notified and scheduled for the hearing *he* requested for this meeting. **No one appeared** and he was Ordered to **Show Cause** as to why his certificates should not be revoked

upon order at the next meeting. Commissioner Donan made the motion for Show Cause which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

- The Commission also considered 07-MSRC-243 Jared Stanley, represented by Hon. Randy Clark, who called prior to the hearing and 08-MSRC-206 Kevin P. Runyon, pro se, who appeared. Mr. Clark moved for a **continuance** to December 11 to allow discovery in the Stanley case and Mr. Runyon moved for a continuance to November 13. Commissioner Donan made the motion approve Petitioner's continuances which were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Order.
- 08-MSRC-172 Timothy J. Brewer, an Initial Denial case, 08-MSRC-194 Perry Adams, 08-MSRC-208 Douglas M. Gooslin were called in turn. None of these respondents appeared or participated and no one on their behalf filed any response. OMSL moved for **revocation** for no less than one (1) year as to each as the Final Order of this Commission. Commissioner Donan made a motion to **grant** the motions which were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered upon the signature of Davidson.

**The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:**

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 08-MSRC-226 Larry Thacker Jr., 08-MSRC-227 Samuel Sizemore III, and 08-MSRC-228 Lonnie D. Mullins. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission also ruled favorably on the proposed **settlement** tendered in the following OMSL Show Cause hearing for revocation: 08-MSRC-085 Mitchell D. Spicer. Commissioner Donan made a motion to **grant**, the OMSL Motion for settlement which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Orders.

**The 11:00 a.m. Docket for Motions to Reconsider:**

- The Commission then called 07-MSRC-107 Christopher S. Dunn. Mr. Dunn requested reconsideration alleging actual compliance and a false positive for the allegedly failing drug test. Dunn agreed to an Amended Settlement Agreement extending the term of testing. Commissioner Donan made a motion to **grant**, the Motion for Reconsideration and Amended Settlement Agreement which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for “traditional” type cases:**

- The Commission called 07-MSRC-143 William H. Harris, which was continued to December 11, because settlement is likely, then the Commission called 07-MSRC-099 David C. Peters, which was continued to November 13 to allow time for exchange of the settlement agreement, next the Commission called 08-MSRC-105 McCarty, Hall & Howard, which was continued to February 12 to allow time for settlement discussions, similarly the Commission called 08-MSRC-123 Osborn & Sandlin, and learned that settlement is pending which should be final by March 12. Finally the Commission called 08-MSRC-128 David Johnson, and was informed that settlement is likely, by Nov. 13 and a continuance was requested. OMSL made a motion to **continue** each case for the consideration of the settlement agreement to those future meetings. Commissioner Donan made a motion to **grant** which was seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- **Petitions for an Order filed by OMSL in roof control cases:**

*None were filed for this meeting.*

**Old Business**

**Ratification of Final Order:**

*None were filed for this meeting.*

- **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday November 13, and the possibility of one traditional type hearing.

❑ **Status Report & Abeyances;**

*None were filed for this meeting.*

❑ **Appeals**

- ❑ The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a **briefing schedule**. Counsel for OMSL is to file a Motion to Dismiss for the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie “Tick” Sizemore**, et al. and learned that it had been appealed to the **Court of Appeals**.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a **briefing schedule**.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The matter was **briefed** by Hon. Larry Moscoe.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated that they were **briefing** the matter.

**New Business**

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** remains to forty nine (49) cents per mile.
- ❑ The required deep and surface mine visits are being scheduled and facilitated by Commissioner Donan for the full Commission.

❑ **Training**

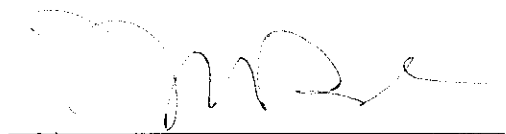
- **Required Hearing Officer Training:** Newly appointed Commissioner Joe F Childers is scheduling his required 40 hour new miner training and the required training for compliance with the KRS 13B hearing officer statutory requirements.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the Reed case (see below) and then reconvened to issue orders below as appropriate.
- ❑ **Probable Cause Determinations**

Probable cause was found as to each Respondent in 08-MSRC-231 Reed, Hampton & Owens.
- ❑ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.
- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday November 13** 2008.
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday November 13, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Denise Moore Davidson  
Mine Safety Review Commission

11/13/08  
Date